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## Mandamus Proceedings

An important land use rule to understand by the applicant and the public are that the county rules for a final action on a permit must occur within 150 days. The 150-Day rules are covered by the Oregon Revised Statutes (ORS).

- **ORS 215.427** - Final Action On County Permit Within 150 Days
- **ORS 215.429** Mandamus Proceeding When County Fails to Take Final Action Within 150 Days
- **ORS 20.075(1)** Factors to Be Considered by Circuit Court in Awarding Attorney Fees
- **ORS 34.210(2)** Prevailing Party and Awarding Attorney Fees



The issue is the effect on citizen participation in a county violation of the 150-day rule (ORS 215.427), and a mandamus process that may follow from the failure, to move the land use process out of the jurisdiction of the JO CO Board of Commissioners (BCC) to the local circuit court.

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1. *State ex rel K. B. Recycling v. Clackamas Cty.*, 171 Or App 46 (2000); *State ex rel Aspen Group v. Washington County*, 166 Or App 217, 996 P2d 1032 (2000); *State ex rel Coastal Management v. Washington Cty.*, 159 Or App 533, 550, 979 P2d 300 (1999).  
2. Hugo Land Use Committee. 2006. *150-Day ORS Standards*. Hugo, OR.

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## Circuit Court Attorney Fees

A specific example of when attorney fees have a chilling effect on good faith claims and defenses follows. A local land use advocate, Holger Sommer, was involved in a writ of mandamus proceeding in Josephine County (JO CO), Oregon (*WTW Development. Llc v. Board of County Commissioners of Josephine County, Oregon and Holger T. Sommer*. Case # 04-C V-0759). The trial on this matter was May 19, 2005. After a half day of the trial, Intervenor Holger Sommer conceded that, with a new drainage plan seen for the first time, the points that he had raised in his appeal had been corrected. On May 31, 2005 a motion for attorney fees was made against him (i.e., the motion was reimbursement of attorney fees of \$6,932.50 and costs and disbursements of \$474.02 and a prevailing party fee of \$500.00 for a total of \$7,906.02). On July 14, 2005 the Josephine County Circuit Court ordered the, Respondent County responsible for 30 percent of the above fees and Intervenor-Respondent Holger Sommer to pay the remaining 70 percent.

In his pretrial memorandum the land use applicant's attorney had asked for attorney's fees and a prevailing fee be awarded. The judge asked the county, "Would the trial have been necessary if Sommer had not intervened." The county answered that trial would have been necessary. When asked how much of the attorneys fees are caused by the county, the relator came up with 25 percent leaving 75 percent and blaming Sommer for it. The judge adjusted the numbers to 30 percent and 70 percent.

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3. All statutory citations and quotations from footnote 2 refer to the pertinent provisions that were in effect at the time of the relevant events.

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## Local Attorney's Fees For JO CO's Violation 150- Day Rule Are In Error

It is clear from Appellant Court opinions that mandamus actions under ORS 215.428(7)<sup>1&3</sup> are not procedures that the legislature established to provide counties with an alternative to making the land use decisions that ORS 215.428(1)<sup>1&3</sup> and other statutes require. It is a remedy that the legislature created to deal with circumstances where counties have failed to make the decisions that those statutes require them to make.<sup>1</sup> In sum, Appellant Court opinions find no basis in trial court's findings to support their conclusions that an award of attorney fees are justified against citizens intervening for local governments' violation of the law under any of the provisions in ORS 20.075(1). These appellant opinions hold that trial courts act beyond the permissible scope of their discretion in awarding attorney fees against intervenors.

This brochure is one of 11 brochures in the Hugo Neighborhood's education series on 150-Day Violations.<sup>2</sup>

**More Information.** Would you like to learn more? Contact a member of the Land Use Committee of the *Hugo Neighborhood*.



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**Disclaimer.** This brochure is as much about providing information and provoking questions as it is about opinions concerning the adequacy of findings of fact and land use decisions. It does not provide recommendations to citizens and it is not legal advice. It does not take the place of a lawyer. If citizens use information contained in this paper, it is their personal responsibility to make sure that the facts and general information contained in it are applicable to their situation.

## Hugo Neighborhood Association & Historical Society's Mission

This information brochure is one of a series of documents published by the Hugo Neighborhood Association & Historical Society (*Hugo Neighborhood*). It is designed to be shared with neighbors for the purpose of helping protect our rural quality of life by promoting an informed citizenry in decision-making. The *Hugo Neighborhood* is an informal nonprofit charitable and educational organization with a land use and history mission of promoting the social welfare of its neighbors.

### Land Use & History

The *Hugo Neighborhood's* land use mission is to promote Oregon Statewide Goal 1 — Citizen Involvement, and to preserve, protect, and enhance the livability and economic viability of its farms, forests, and rural neighbors. It will act, if requested, as a technical resource assisting neighbors to represent themselves.

Its history mission is to educate, collect, preserve, interpret, and research its local history and to encourage public interest in the history of the Hugo area.

Volunteer membership dues are \$10.00 annually per family and normally used for paper, ink, envelopes, publications and mailings. Make checks to the *Hugo Neighborhood* and send them to our Treasurer. Send us your e-mail address if you want to know what we are doing.

*Hugo Neighborhood Association*  
Web Page: <http://jeffnet.org/~hugo/>

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## Circuit Court Attorney Fees From 150-Day Mandamus Proceedings

Brochure 12E in Josephine County  
CI Issues & Problems Series



**December 5, 2006**

**Land Use Committee  
Hugo Neighborhood Association**

**Members of the CAC/NA Coalition**